

---

UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

a/k/a "Akhbar Farhad"

a/k/a "Akhbar Farnad"

a/k/a "Ahmed Muhammed Khali"

)  
) IN THE COURT OF MILITARY  
) COMMISSION REVIEW  
)  
)

) APPELLANT'S OPPOSITION TO  
) UNTIMELY FILED *AMICUS*  
) *CURIAE* BRIEF  
)  
)

) Case No. 07-001  
)

) Tried at Guantanamo Bay, Cuba  
) On 4 June 2007  
)

) Before a Military Commission  
) Convened by MCCO # 07-02  
)

) Presiding Military Judge  
) Colonel Peter E. Brownback III  
)

---

**TO THE HONORABLE JUDGES OF THE COURT OF MILITARY  
COMMISSION REVIEW**

**Relief Requested**

The Government respectfully requests that this Court reject the late filing of the *amicus curiae* brief filed on behalf of Appellee. Amici have failed to show cause as to why they should be granted a filing extension, and have not demonstrated "extraordinary circumstances" required by the Court in its 13 July 2007 Ruling on Motions and Briefing Order.

**Discussion**

The Court of Military Commission Review Rules of Practice ("CMCR Rules") allow *amicus curiae* briefs to be filed "no later than the due date for the defense brief." CMCR Rule 14(c)(1). The filing deadline for Appellee's brief was 13 August 2007, per the Court's Ruling on Motions and Briefing Order of 13 July 2007. On 21 August 2007 an *amicus curiae* brief was

filed on behalf of Appellee, more than one week past the filing deadline, and less than 72 hours prior to the hearing on appeal. The *amicus* brief should therefore be denied.

The untimely *amicus* brief should be rejected by this Court, even though the amici filed a Motion for Leave to File Out of Time. Per the amici's own words "[t]he argument presented herein has not been developed in the pleadings of this case or in any related case." Addressing novel legal arguments not previously raised in the underlying appeal is questionable at best. Amici Motion for Leave to File, at 3. Additionally, the amici write that "[t]his brief is late because of a miscommunication concerning the filing deadline." *Id.* at 4. Miscommunication is hardly sufficient to meet the "for cause shown" standard of CMCR Rule 21(c).

Filing briefs according to the CMCR Rules is important so that all parties either have time to respond in writing, or have time to prepare for oral argument. In this case, by filing the *amicus* brief less than 72 hours prior to the appellate hearing, amici have insulated their brief from written scrutiny, and prevented adequate time to prepare these issues for oral argument. Furthermore, in its 13 July 2007 Ruling on Motions and Briefing Order, the Court issued a "revised and final" briefing order. The filing periods granted by the Court were greater than those requested by the parties. The Court concluded in this order that "absent extraordinary circumstances, no further enlargement of time shall be granted in regard to the matter currently before the court." Whether due to miscommunication or raising novel legal issues, Amici have not met the burden of demonstrating "extraordinary circumstances" warranting a filing extension for their brief. Therefore, the *amicus* brief should be denied as untimely.

**Prayer for Relief**

The Appellant respectfully requests that this Honorable Court grant the Government's Opposition to the amicus curiae brief and reject the amicus brief as untimely filed.

//s//

Jeffrey D. Groharing  
Major, U.S. Marine Corps  
Prosecutor



Keith A. Petty  
Captain, U.S. Army  
Assistant Prosecutor

//s//

Clayton Trivett, Jr.  
Lieutenant, U.S. Navy  
Assistant Prosecutor

//s//

Francis Gilligan  
Office of Military Commissions  
Appellate Prosecutor

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was emailed to Lieutenant Commander Kuebler on the 22<sup>nd</sup> day of August 2007.

A handwritten signature in black ink, appearing to read "Keith A. Petty", with a long horizontal stroke extending to the right.

Keith A. Petty  
Prosecutor  
Office of Military Commissions